

	Administrative Regulation Family Medical Leave	Policy #	03-02.02
		Effective Date:	October 31, 2017
		Revision Date:	June 6, 2022
		Owner:	Human Resources

Purpose:

To explain the City of Springfield's policy and procedures regarding protected leave rights.

Scope:

This policy applies to all City of Springfield employees. For additional specific provisions, represented employees should also refer to their labor agreements/contracts.

Policy:

It is the policy of the City of Springfield to comply with the federal Family and Medical Leave Act of 1993 ("FMLA") and the Oregon Family Leave Act of 1995 ("OFLA"), referred to jointly as Family Medical Leave to eligible employees. Eligible employees are generally entitled to up to 12 weeks of protected leave during a year, except as noted below, or up to 26 weeks if providing care for a recovering armed forces service member. The law guarantees a maximum amount of time off which is either paid or unpaid depending upon the available unused leave accrual banks.

Federal and state laws protect an employee against loss of employment for reasons related to the leave and in some cases, against loss of insurance coverage in the event an employee must be absent from the workplace due to their own serious health condition, the serious health condition of a family member, to care for a family member injured in the line of duty while on active duty, or for the qualifying exigency for a family member called to active duty or an impending call or order to active duty.

FMLA and OFLA are complex laws and not every detail will be included in this regulation, but the City will administer this policy in accordance with all legal requirements. Employees are encouraged to seek specific information for their leave requests from Human Resources as soon as the need arises.

Procedure:

1. Leave Eligibility

- 1.1. *Family Medical Leave Act (FMLA)*. Employees must have worked for the City at least twelve (12) months (not necessarily consecutive months) and have worked at least 1250 hours during the 12 month period immediately preceding the leave.

- 1.2. *Oregon Family Leave Act (OFLA)*. Employees must have been employed by the City for at least 180 days immediately preceding the leave and have worked for an average of at least 25 hours per week during the 180 days immediately preceding the leave to qualify for family medical leave. Employees taking leave to care for a newborn, adopted, or newly placed foster child only have to meet the 180 day employment requirement (regardless of number of hours worked). OFLA leave must be taken concurrently with FMLA leave when the leave is concurrently covered by OFLA and by FMLA.
- 1.3. In determining the 12 calendar months and 180 calendar days, the employer must count the number of days an employee has been on payroll, including all paid and unpaid time. The 1250 hours and 25 hours per week minimums are based on actual hours worked.
- 1.4. Employees may take protected leave in a continuous block of time, a series of blocks of time, or intermittently, depending on medical necessity and the type of leave requested. Employees will not be required to take more leave than the condition requires. Only the actual amount of leave taken for a certified/qualified event may be counted as protected leave.
- 1.5. When two eligible family members work for the City, both employees may take OFLA leave at the same time only under the following circumstances:
 - 1.5.1. One employee needs to care for the other employee suffering from a serious health condition; or
 - 1.5.2. One employee needs to care for a child suffering from a serious health condition while the other employee is also suffering from a serious health condition; or
 - 1.5.3. Both family members are suffering from a serious health condition; or
 - 1.5.4. The employer approves the concurrent leave. (Example: Bereavement)
- 1.6. Once an employee exhausts FMLA and OFLA leave, the City's policy regarding absenteeism and leave is applicable. If appropriate, the employee may apply for extended leave.
2. Reasons for Taking Family Medical Leave. An employee may qualify for Family Medical Leave under the federal and/or state law for the following circumstances:
 - 2.1. *A Serious Health Condition*. Family Medical Leave is available to care for an employee's own serious health condition, including pregnancy related conditions, and to care for the serious health condition of an employee's family member, including, the employee's spouse, parent, biological child, adopted or foster child. An employee may take leave or work an irregular, intermittent, or modified schedule as necessary. This includes an approved medical condition of the employee or the employee's family member.

2.1.1. A serious health condition includes a critical illness or injury diagnosed as terminal or which poses an imminent danger of death; multiple treatments for restorative surgeries or for conditions that would likely result in a period of incapacity of more than three days without treatment; and continuing treatment due to an incapacity lasting more than three consecutive days and including two or more treatments by a health care provider or one treatment with a continuing regimen of treatment. (Note: The “three-day rule” does not apply to pregnancy related disability, prenatal care, chronic health conditions or multiple treatments.)

2.1.2. Under OFLA, this leave is also available to care for the employee’s parent-in-law.

2.2. *Pregnancy Disability.* Female employees may qualify for up to an additional 12 weeks of protected leave when taking leave for a pregnancy related disability (including prenatal care).

2.3. *Parental.* An employee must take parental leave in one continuous block for the birth of a child or for the placement of a child under 18 years of age for adoption or foster care. The supervisor or manager may allow intermittent leave or modified work schedule after consultation with the Human Resources leave administrator. Parental Leave must be completed within 12 months of the birth of a newborn or placement of an adopted or foster child. No parental leave is available after the expiration of 12 months of the birth or placement of the child.

2.3.1. Parental leave taken to arrange for the adoption or fostering of a child does not have to be taken in one uninterrupted period.

2.3.2. If both family members work for the City, employees can be required to share the 12-week FMLA entitlement for Parental leave (for the birth, adoption, or foster child placement). Under special circumstances, the City may allow spouses to both use their full entitlements.

2.4. *Sick Child (OFLA only)*

2.4.1. To care for a child who suffers from an illness or injury that does not qualify as a serious health condition but that requires home care An employee may take leave as needed rather than in continuous block of time. This type of leave does not provide for routine medical and dental appointments or issues surrounding the availability of childcare when the child is not ill or injured.

2.4.2. To care for children whose school or childcare provider has been closed due to a statewide public health emergency.

2.4.3. Sick child leave is not available if another family member is able and willing to care for the child.

- 2.5. *Bereavement (OFLA only)*. For the death of a qualifying family member. The employee is provided up to two weeks of leave for the following reasons: attending the funeral or alternative to a funeral of a family member; making arrangements necessitated by the death of the family member; and/or grieving the loss of a family member. Leave must be completed within 60 days of the date on which the employee receives notice of the death.
- 2.6. *Call to Active Duty (FMLA only)*. Eligible employees with a spouse, son, daughter or parent on active duty or call to active duty status in the regular Armed Forces, National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain “qualifying exigencies.” “Qualifying exigencies” may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.
- 2.7. *Oregon Military Family Leave (OFLA only)*. During a period of military conflict, as defined by the statute, eligible employees with a spouse who is a member of the Armed Forces, National Guard, or military reserve forces of the U.S. and who has been notified of an impending call or order to active duty, or who has been deployed, is entitled to a total of 14 days of unpaid leave per deployment after the military spouse has been notified of an impending call or order to active duty and before deployment and when the military person is on leave from deployment.
- 2.8. *Service Member Family Leave (FMLA only)*. Eligible employees may take up to 26 weeks of leave to care for a “covered service member” during a single 12-month period. A “covered service member” is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty or while on active duty that may render the service member medically unfit to perform the duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. Under some circumstances, a veteran will be considered a “covered service member.”
- 2.8.1. When leave is taken for Service Member Family Leave, an eligible employee may take up to 26 weeks of leave during the One-Year Calculation Period to care for the service member. During the One-Year Calculation Period in which Service Member Family Leave is taken, an eligible employee is entitled to a combined total of 26 weeks of FMLA Leave (some of which may include other types of FMLA-specific leaves of absence).
- 2.9. *Unpaid Statutory Leave*. This is leave authorized under FMLA and OFLA that may be available after all paid leave is exhausted.
3. Calculation of the Leave Year. The City uses a rolling backward year which measures back 12 months to determine if protected leave is available to an employee. An employee is

entitled to use any balance of the 12 weeks which has not been used during the preceding 12 months.

4. Leave Request and Notification Requirements. Employees are encouraged to seek specific information for their leave requests from Human Resources as soon as the need arises. When the information discussed in this administrative regulation conflicts with an existing bargaining unit contract, the bargaining unit contract will govern.
 - 4.1. *Anticipated or foreseeable leave.* When the employee anticipates that leave will be needed, the employee must submit a leave request no later than 30 days before leave begins. An employee's failure to provide notice of foreseeable leave may result in a reduction of the total leave available by as much as three weeks or may result in the leave being delayed until 30 days after the City receives notice.
 - 4.2. *Unanticipated or not foreseeable leave.* When 30 days' notice is not possible, employees should submit a leave request as soon as practicable to give the City as much notice as possible, considering the circumstances. This will usually mean within one or two business days of when the need for leave is known. Notice may be provided by the employee or by any other person providing information on the employee's behalf, such as a family member.
 - 4.2.1. At a minimum, when the need for Family Medical Leave arises out of an emergency situation, the employee must give verbal or written notice within 24 hours after starting leave and submit a leave request within three (3) days after the need for the leave is known. If an employee has not previously requested Family Medical Leave but has been absent due to illness or injury for more than three (3) consecutive workdays, the supervisor should notify Human Resources so the City can inquire into the reason for the unplanned absence to determine if an employee's leave qualifies under FMLA and/or OFLA leave provisions.
 - 4.2.2. Upon notice of an employee's need for leave or information indicating the employee may be eligible for Family Medical Leave, the employee shall submit the leave request or the supervisor may submit on behalf of the employee depending on what is appropriate.
 - 4.3. *Active Duty Leave.* If a family member is called to Active Duty, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable.
 - 4.4. Departments are to review all potential Family Medical Leave qualifying situations with Human Resources. The Human Resources leave administrator will distribute, review and approve all required forms.
 - 4.5. Once the leave request is received, the Human Resources Department will provide the employee with the employer response that will include but is not limited to:
 - 4.5.1. Provisional approval, approval/designation or denial of requested leave.

4.5.2. Applicable medical certification requirements and the consequences for not providing such information as requested.

4.5.3. Information regarding continuation of benefits.

5. Medical Certification.

5.1. The employee must provide sufficient information for the City to determine if the leave may qualify for FMLA and/or OFLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions; the family member is unable to perform daily activities; the need for hospitalization or continuing treatment by a health care provider; or circumstances supporting the need for either Call to Active Duty or Service member Family Leave. The employee also must inform the employer if the requested leave is for a reason for which Family Medical Leave was previously taken or certified. Additionally:

5.1.1. The employee requesting leave for their own serious health condition or to care for a covered family member will be required to provide certification from the health care provider of the employee or the covered family member to support the request.

5.1.2. The employee requesting sick child leave under OFLA may be required to submit, at a minimum, a note from a doctor if the employee has requested to use more than three days (i.e., one three-day occurrence or three separate one-day instances) of sick child leave within a one-year period.

5.2. The employee must furnish the City's requested medical certification information within 15 calendar days after such information is requested by the City. In some cases (except for leave to care for a sick child), the City may require a second or third opinion, at the City's expense. The employee also may be required to submit subsequent medical verification.

5.3. The HR Department may request a new medical certification under the following conditions:

5.3.1. The employee requests an extension of leave;

5.3.2. Circumstances described by the previous certification have changed significantly;

5.3.3. More than 30 days have passed since the certification was received by HR.

5.4. The employee will not be asked for, and should not provide, any genetic information in connection with a FMLA/OFLA medical certification per the Genetic Information Nondiscrimination Act of 2008.

5.5. If required documentation is not received or is insufficient, leave may be denied.

- 5.6. The cost of medical certification not covered by insurance or other benefits will be paid by the City.
6. Intermittent/Modified Schedule Leave.
- 6.1. The employee may take leave intermittently that may require an altered or modified work schedule for their own serious health condition or to care for a family member with a serious health condition. All intermittent or modified schedules must be pre-approved.
- 6.2. Intermittent Parental Leave must be approved by the employee's department and Human Resources.
7. Use of Paid Leave. Employees are required to use accrued paid leave prior to a period of unpaid leave while on Family Medical Leave. Employees may use any of their leave banks and use of accrued paid and unpaid leaves will run concurrently with Family Medical Leave. Represented employees may reserve accrued leave if provided by their collective bargaining agreement. If the employee has no accrued paid leave available to use during a Family Medical Leave, the leave will be unpaid.
8. Leave Accrual. Employees will continue to accrue paid leave while on Family Medical Leave.
9. Holiday Pay While on Leave. Employees eligible for holiday pay qualify for holiday pay while on approved Family Medical Leave. Holidays during continuously taken Family Medical Leave will be counted towards the 12 week Family Medical Leave entitlement.
10. On-the-Job Injury or Illness. Periods of employee disability resulting from a compensable on-the-job injury or illness will qualify for FMLA leave if the injury or illness is a "serious health condition" as defined by applicable law. OFLA leave will not be reduced by and will not run concurrently with any period the employee is unable to work because of a disabling compensable on-the-job injury; however, if the injury or illness is a "serious health condition" as defined by Oregon law and the employee has refused a bona fide offer of modified duty, OFLA leave will commence. If the employee's serious health condition is the result of an on-the-job injury or illness, the employee may qualify for workers' compensation time-loss benefits.
11. Benefits while on Leave. If an employee is on approved Family Medical Leave, the City will continue the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work.
12. Return to Work. If Family Medical Leave is for the employee's own serious health condition, the employee must furnish a medical certification (also known as a fitness-for-duty certification) from their health care provider stating that the employee is able to resume work, either fully or with restrictions, prior to returning to work.
13. Job Protection:

- 13.1. Employees returning to work from Family Medical Leave will be reinstated to their former position. If the position has been eliminated, the employee may be reassigned to an available equivalent position if one is available.
- 13.2. Employees are expected to promptly return to work when the circumstances requiring Family Medical Leave have been resolved, even if leave was originally approved for a longer period.
- 13.3. Employment benefits that were in place prior to the start of an employee's approved protected leave will continue during the duration of the protected leave.
- 13.4. Employees who work for other employers during a "serious health condition" leave may be subject to discipline up to and including termination.
- 13.5. Employees who use Family Medical Leave for reasons other than the reason for which leave had been granted may be subject to discipline up to and including termination.

14. Exhaustion of Family Medical Leave.

- 14.1. Under certain circumstances, leave may be extended beyond the 12 weeks provided by the Family Medical Leave Act. The employee will be required to use any remaining paid leave banks. Leave will not accrue during periods of unprotected, unpaid leave or during any form of donated leave or leave program. If additional leave is granted, the provisions of the State and Federal law governing Family Medical Leave do not apply.
- 14.2. If an employee requires additional leave beyond the 12-weeks, health benefits may be maintained for up to three months following the exhaustion of Family Medical Leave. The employee is responsible for paying the employee portion. Once three months is exhausted, the employee may elect to enroll in COBRA.

Definitions

1. "*Active Duty*" is an employee who is a member of a regular component of the Armed Forces.
2. "*Child*" for the purpose of OFLA, includes a biological, adopted, foster or stepchild, a legal ward, or child whom you stand in loco parentis, and the child of the same-sex domestic partner.
 - 2.1. For purposes of OFLA Serious Health Condition Leave, the term "child" can be any age; for all other types of leave under OFLA, the "child" must be under the age of 18 or over 18 if incapable of self-care.
3. "*Child*" for purposes of FMLA as a biological, adopted, foster, or stepchild, a legal ward, or a child of a person standing in loco parentis who is 17 years of age or younger. The age limit does not apply if the child is incapable of self-care because of a mental or physical disability..

- 3.1. FMLA also provides separate definitions of “son or daughter” for FMLA military family leave that are not restricted by age.
4. “*Chronic Health Condition*” is a condition that meets all of the following requirements:
- 4.1. Requires periodic visits for treatment by a healthcare provider or by a nurse or physician assistant under direct supervision of a healthcare provider.
- 4.2. Continues over an extended period of time, including recurring episodes of single underlying condition.
- 4.3. May cause episodic rather than continuing incapacity (e.g., asthma, diabetes, epilepsy).
5. “*Health Care Provider*” is an individual who is licensed by the state to deliver health care services to certify FML. Healthcare providers may be a doctor of medicine or osteopathy, dentist, clinical psychologist, social worker, physician assistant, optometrist, podiatrist, chiropractor, nursing practitioner, nurse mid-wife, or Christian Science practitioner who certifies FML within the scope of their practice.
6. “*Incapacity*” means the inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment for the condition or recovery from the condition.
7. “*In loco parentis*” is the type of relationship in which a person has put themselves in the situation of a parent by assuming and discharging the obligations of a parent to a child. It exists when an individual intends to take on the role of a parent. FMLA regulations define in loco parentis as including persons with day-to-day responsibilities to care for or financially support a child. Courts have indicated some factors that determine in loco parentis status include:
- the age of the child;
 - the degree to which the child is dependent on the person;
 - the amount of support, if any, provided; and
 - the extent to which duties commonly associated with parenthood are exercised.
8. “*Modified Duty*” is an offer for temporary work assignment made to a worker who is recovering from an illness or injury and who has received clearance from a physician to return to work under specific limitations.
9. “*Parental Leave*” is leave taken to care for the employee’s newborn, newly adopted or newly placed foster child.
10. “*Qualifying Family Member*” means:

- 10.1. *FMLA*- “Family member” for purposes of serious health condition leave of the employees’ spouse, child or parent (or one standing in the place of a parent or child of the employee).
 - 10.2. *OFLA*- “Family member” for purposes of serious health condition leave, sick child leave or leave for the death of a family member means the spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, stepparent, parent-in-law, parent of same-gender domestic partner, grandparent or grandchild of the employee, or a person with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee or the child of an employee’s same-gender domestic partner. For the purposes of *OFLA*, an employee’s child in any of these categories may be either a minor or an adult at the time serious health condition leave or leave under ORS 659.159(1) is taken.
11. “*Serious Health Condition*” is a condition involving continuing treatment by a healthcare provider including any of the following conditions:
 - 11.1. A period of incapacity for more than 3 consecutive calendar days involving treatment by a healthcare provider two or more times, or at least one time that results in a regimen of continuing treatment;
 - 11.2. Any period of incapacity due to pregnancy or prenatal care;
 - 11.3. Any period of incapacity due to a chronic health condition;
 - 11.4. A period of incapacity that is permanent or long-term for which treatment may not be effective (e.g., Alzheimer’s severe stroke, terminal states of a disease);
 - 11.5. Any period of absence to receive multiple treatments either for restorative surgery after an accident or injury or for a condition that would likely result in an incapacity for 3 or more day on the absence of medical treatment (e.g., cancer, sever arthritis);
 - 11.6. Allergies or mental conditions resulting from stress but only if they meet all of the other criteria of a serious health condition; and
 - 11.7. Substance abuse, but only if the employee is taking leave for treatment by a healthcare provider to resolve the substance abuse.
 12. “*Treatment*” includes but is not limited to examinations to determine if a serious health condition exists and evaluation of the condition. Treatment does not include routine physical, eye or dental exams.
 - 12.1. Specific conditions for which treatment does not qualify for Family Medical Leave include a cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems and periodontal disease.

12.2. Cosmetic treatments are not considered a serious health problem unless medically required or unless complications arise.

Resources:

1. [Oregon Military Family Leave Act- ORS 659A.090-.099](#)
2. [Bureau of Labor and Industries. Oregon Family Leave Act.](#)
3. [Bureau of Labor and Industries OFLA FAQ](#)
4. [FMLA Employee Rights](#)
5. [Leave of Absence Policy](#)

CREATION (Original):

This administrative regulation is in effect as of the date of my signature. I authorize the Human Resource Director to modify the history and resources sections and header, footer, and numbering without my reauthorization. The administrative regulation remains in effect should these revisions occur.			
Approved By:	Gino Grimaldi, City Manager	Dates:	October 31, 2017
Author:	Chaim Hertz, Director of H		
Responsible Party:	Human Resources		
Replaces:	Employee Personnel Policy and Procedure Manual Section 9.1 regarding Family and Medical Leave		

PERIODIC REVIEW:

Reviewer:	DeeDee Judd, HR Analyst II	Date:	March 30, 2022
Reviewer:		Date:	
Reviewer:		Date:	
Reviewer:		Date:	
Reviewer:		Date:	

REVISIONS:

Version #3:	Responsible Party:	Human Resources		
	Revised By:	Chaim Hertz, Director of Human Resources		
	Approved By:	Nancy Newton, City Manager	Date:	June 2, 2022
	Reason/Summary of Changes:	Added clarifying language under procedural sections 1.5 and 2.3.x to explain parental leave rules when both parents work for the same employers.		

Version #2:	Responsible Party:	Human Resources		
	Revised By:	Chaim Hertz, Director of Human Resources		
	Approved By:	Nancy Newton	Date:	September 25, 2020
	Reason/Summary of Changes:	Oregon rules changes to OFLA related to school and daycare closure. Also updates added the section related to medical certification		